

**DOCUMENT RESUME**

**03592 - [A2453606]**

**[Protest against Award of a Combined Small Business/Labor Surplus Area Set-Aside Contract]. B-189001. September 1, 1977. 5 pp.**

**Decisio. re: Glenn Berry Mfrs., Inc.; by Robert F. Keller, Deputy Comptroller General.**

**Issue Area: Federal Procurement of Goods and Services (1900).**

**Contact: Office of the General Counsel: Procurement Law I.**

**Budget Function: National Defense: Department of Defense -**

**Procurement & Contracts (058).**

**Organization Concerned: Clifford Industries, Inc.; Department of**

**Defense: Defense Personnel Support Center, Philadelphia, PA.**

**Authority: A.S.P.F. 2-405. 50 Comp. Gen. 559. 50 Comp. Gen. 565.**

The protester objected to the award of a contract under a combined small business/labor surplus area set-aside solicitation. The awardee's bid was responsive since the bid identified the location where the manufacturing costs would be incurred in sufficient detail to permit the contracting officer to determine whether the firm qualified for the preference claimed. The information omitted by the bidder under the place of performance and inspection and acceptance clauses of the small business/labor surplus area set-aside constituted a minor informality or irregularity and did not affect the responsiveness of the bid. (Author/SC)

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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-189001

**DATE:** September 1, 1977

**MATTER OF:** Glenn Berry Manufacturers, Inc.

**DIGEST:**

1. Bid submitted in response to IFB, combined small business/labor surplus area set-aside, is responsive where bid identifies location where manufacturing costs will be incurred in sufficient detail to permit contracting officer to determine whether firm qualifies for preference claimed.
2. Bidder's failure to specify street address, zip code, and telephone number of each plant and similar information plus name and address of owner and operator of each plant where contract is to be performed, under place of performance and inspection and acceptance clauses of small business/labor surplus area set-aside constitutes minor informality or irregularity and does not affect responsiveness of bid.

Glenn Berry Manufacturers, Inc. (Glenn Berry), protests the award of a contract for five items to Clifford Industries, Inc. (Clifford), under invitation for bids (IFB) No. DSA100-77-B-0599, issued by the Defense Personnel Support Center (DPSC), Philadelphia, Pennsylvania. The IFB is a combined small business/labor surplus area set-aside for the manufacture of trousers. Glenn Berry contends that Clifford's bid is nonresponsive on the grounds that it did not fully complete clauses B08, "Eligibility for Preference as a Labor Surplus Concern"; B10, "Place of Performance"; and B32, "Inspection and Acceptance by the Government."

In its bid, Clifford certified that it is a small business concern, a manufacturer of the supplies offered, a corporation incorporated under the laws of the State of Alabama, and a certified-eligible labor surplus concern with a first preference. The IFB included clause B08 concerning eligibility for preference as a labor surplus concern. This clause reads in pertinent part as follows:

B-189001

"(a) Each offeror desiring to be considered for award as a Labor Surplus Area (LSA) concern on the set-aside portion of this procurement, specified elsewhere in the schedule, shall indicate below the address(es) where costs will be incurred and complete the 'Representation of Eligibility as a Certified Eligible Concern' as appropriate.

"(b) Insert below the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than twenty-five percent (25%) of the contract price, if offering as a certified-eligible concern, or will amount to more than fifty percent (50%) of the contract price if offering as a persistent or substantial labor surplus area concern.

\* \* \* \* \*

"CAUTION: Failure to list the location of manufacture or production and the percentage, if required, of cost to be incurred at each location will preclude consideration of the offeror as an LSA Concern. In addition, if eligibility is based on status as a certified-eligible concern, failure to complete the representation of eligibility above will preclude consideration of the offeror as a certified-eligible concern."

Clifford's bid appeared as follows with regard to clause B08:

"Name of Company: Clifford Industries Inc.

Street Address: Winfield

City/County: Alabama

Percentage: 100%"

Glenn Berry contends that Clifford's failure to list its street address, as required above, rendered its bid nonresponsive. However, the firm does not claim that firms located in Winfield, Alabama, are ineligible for preference as labor surplus concerns.

B-189001

In our opinion, Clifford's failure to list the street address is a minor informality or irregularity which is correctible or waivable pursuant to Armed Services Procurement Regulation (ASPR) § 2-405 (1976 ed.). Failure to list the street address had no effect on price, quality, quantity or delivery of the supplies being procured and waiving Clifford's omission does not affect the relative standing of bidders, and is not otherwise prejudicial to other bidders. Our opinion is based on the fact that Clifford's listing its address as Winfield, Alabama, is sufficient to determine whether the firm is eligible to compete as a labor surplus concern. The United States Department of Labor lists the areas of substantial unemployment by city or county and not by street address. Moreover, Clifford's certificate of eligibility contains no address and the terms of the contract require performance in an appropriate labor surplus area. Since the address listed in Clifford's bid as Winfield, Alabama, is sufficient to determine whether that area has substantial unemployment and therefore whether a firm located in that area qualifies as a labor surplus concern, the omission of a street address is a minor defect which does not affect the responsiveness of Clifford's bid. In a similar case, we found even the listing of the wrong place of performance to be waivable. See 50 Comp. Gen. 559. 565 (1971).

Glenn Berry contends that Clifford's bid is nonresponsive for failing to fully comply with clause B10 in not listing the street address, zip code and telephone number of each plant at which work would be performed if Clifford were awarded a contract. Counsel further states that Clifford failed to provide the name and address, including zip code and telephone number, of the owner and operator of each such plant as required by clause B10, "Place of Performance."

"Offerors must stipulate below the plant(s) where the work is to be performed, indicating the exact address(es) (Street, City, County, State) thereof, name(s) and addresses(es) of the owner(s) and operator(s), the operation to be performed at such plant(s) and the quantity of items to be manufactured at each plant. FAILURE TO FURNISH THE INFORMATION WITH THE BID MAY RESULT IN REJECTION OF THE BID. If a portion of the item(s) being procured is restricted either to labor surplus area or small business sources, offers failing to list the place of performance may not be considered

B-109001

unless those plants are owned or leased by the offeror prior to offer opening, provided further the geographical area in which the offeror proposes to perform is identified in the offer. Information required under this clause, which the offeror desires to remain confidential, must be supplied in a letter accompanying the offer and must be identified as such. The government will maintain information so submitted except as inconsistent with existing law."

Clifford responded to these requirements as follows:

"Plant Name & Location (Street, City, County, State ZIP Code & Telephone No.)	Name & Address (including ZIP code & Telephone No.) of Owner & Operator (if bidder, so indicate)
Clifford Industries Inc. Winfield, Ala.	Box 910 Winfield Ala. . 35594"

The contracting officer states that Clifford did list its telephone number and zip code in Block 17, page 1 of the IFB, thus partially satisfying the requirements of clause B10. In our opinion, Clifford's failure to list a street address, zip code and telephone number is a minor deviation which is properly waivable under AS<sup>PR</sup> § 2-405. Offerors were required to list the place of performance in order that the contracting officer could determine that the work was going to be performed in a labor surplus area by a small business. Clifford did not state that it will subcontract any operation, but did indicate that 100 percent of all operations is to be performed at its plant located in Winfield, Alabama. From the information Clifford submitted, it is clear that Clifford intended to perform the work at its plant in Winfield, Alabama, which is in a labor surplus area. Under these circumstances, we believe Clifford's failure to fully complete clause B10 is immaterial since it has no effect on price, quality, quantity, or delivery schedule.


The third ground of Glenn Berry's protest is that, contrary to the provisions of clause B32, "Inspection and Acceptance by the Government," Clifford failed to list the street address

B-189001

and zip code where its products would be inspected and accepted by the Government. Clifford completed B32 by stating "Clifford Industries Inc., Winfield, Ala." In our opinion, Clifford's failure to list its street address and zip code is also a minor informality which has no effect on price, quality, quantity, or delivery schedule. There is no evidence presented to show that Clifford had more than one location in Winfield and its stated address is sufficient to identify where its products would be inspected.

To the extent the alleged deficiencies in Clifford's bid have been viewed by Glenn Berry as impacting on Clifford's small business status or eligibility as a manufacturer under the Walsh-Healey Public Contracts Act, the procurement activity referred these matters to the appropriate agencies. Since award has recently been made, we assume those matters were resolved favorably toward Clifford.

For the reasons stated, Glenn Berry's protest is denied.

  
Deputy Comptroller General  
of the United States